

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ISSAQUAH**

In the Matter of the Applications of)	No. VAR16-00002; No. PP16-00005
)	
Leo Suver, on behalf of Steve Burnstead)	Mallard Bay Preliminary Plat
Construction, LLC)	
)	
For Approval of a Critical Areas Variance)	FINDINGS, CONCLUSIONS,
<u>and a Preliminary Plat</u>)	AND DECISION

SUMMARY OF DECISION

The requests for a Critical Areas Variance to impact 9,741 square feet of stream buffer for an access road and a Preliminary Plat to subdivide a 13.1-acre parcel into 34 single-family residential lots at 21403 SE 43rd Way are **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and variance.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the requests on September 19, 2017. The Hearing Examiner issued a Post-Hearing Order on September 21, 2017, to hold the hearing record open until October 5, 2017, to receive additional documents for the record and any comments on them by a party of record.

Testimony:

The following individuals presented testimony under oath at the hearing:

Keith Niven, City Planner
Leo Suver, Applicant Representative
Bill Shiels, for the Applicant
Jeff Schramm, for the Applicant
David Kappler
Lauren Balisky

Exhibits:

The following variance exhibits were admitted into the record:

- V1. Mallard Bay Composite Grading and Utility Plan (Sheet C4.00 of 20), dated December 2016
- V2. Stream buffer impact
 - a. Mallard Bay Entry Roadway Concept, undated
 - b. Mallard Bay Existing Conditions Map (Figure #6), dated December 14, 2016

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- c. Mallard Bay Proposed Site Plan Overview (Figure #7), dated December 14, 2016
- V3. Mallard Bay Vicinity Map, undated
- V4. Notice
 - a. Affidavit of Service of Mailing, dated August 22, 2017
 - b. Notice of Hearing, undated
 - c. Email from Gretchen Garrett to Parties of Record, dated August 22, 2017
 - d. Mailing labels
- V5. Classified Advertising Proof/Receipt, Public Hearing Notice, *Issaquah/Sammamish Report*, dated August 25, 2017, with published notice
- V6. Staff Report, dated August 18, 2017
- V7. Letter from Jennifer M. Marriott, Talasaea Consultants, Inc., Variance Request – Project Narrative, dated December 16, 2016
- V8. Critical Areas Report and Conceptual Mitigation Plan, Talasaea Consultants, Inc., dated December 16, 2016
- V9. Memo from Keith Niven to Hearing Examiner, dated September 25, 2017

The following preliminary plat exhibits were admitted into the record:

- PP1. Notices
 - a. Notice of Application, dated June 28, 2017
 - b. Affidavit of Sign Installation, dated February 2, 2017
- PP2. Development Services Director AAS & Interpretation for Mallard Bay, dated September 25, 2016
- PP3. Regional Trail Exhibit, Composite Grading and Utility Plan (Sheet C4.00 of 20), dated December 2016
- PP4. SEPA Threshold Determination
 - a. Determination of Nonsignificance, dated August 18, 2017
 - b. SEPA Environmental Checklist, dated December 16, 2016
 - c. Mallard Bay Preliminary Plat Vicinity Map, undated
 - d. Final Staff Evaluation for Environmental Checklist SEP 16-00005, updated August 18, 2017
 - e. Email from Nikki Fields, Washington State Parks & Recreation Commission, to Keith Niven, dated August 2, 2017
- PP5. Letter from Keith Niven to Leo Suver, dated July 21, 2017, Tree retention reduction conditional approval
- PP6. Public comment
 - a. Email from Teresa Riley to Keith Niven, dated July 5, 2017, with email string
 - b. Email from June Thornton to Keith Niven, dated July 6, 2017
 - c. Email from Alfred Wong to Keith Niven, dated July 9, 2017
 - d. Email from Ed Bullock, Alta at the Lake Association, to Keith Niven, dated July 11, 2017
 - e. Email from Nikki Fields, Washington State Parks and Recreation Commission, to Keith Niven, dated August 2, 2017

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- PP7. Preliminary plat plans, dated December 2016
- a. Title Sheet (C1.01 of 20)
 - b. Existing Conditions (C1.02 of 20)
 - c. Existing Conditions (C1.03 of 20)
 - d. Preliminary Plat Map (C1.04 of 20)
 - e. Composite Grading and Utility Plan (C4.00 of 20)
 - f. Preliminary Grading and Utility Plan (C4.01 of 20)
 - g. Preliminary Grading and Utility Plan (C4.02 of 20)
 - h. Preliminary Grading and Utility Plan (C4.03 of 20)
 - i. Preliminary Road Profiles and Details (C4.21 of 20)
 - j. Preliminary Road Profiles (C4.22 of 20)
 - k. Preliminary Tree Retention Plan (L1.01 of 20)
 - l. Preliminary Tree Retention Plan (L1.02 of 20)
 - m. Preliminary Tree Retention Plan (L1.03 of 20)
 - n. Preliminary Tree Retention Plan (L1.04 of 20)
 - o. Preliminary Landscape Plan (L2.01 of 20)
 - p. Preliminary Landscape Plan (L2.02 of 20)
 - q. Preliminary Landscape Plan (L2.03 of 20)
 - r. Preliminary Landscape Schedule and Notes (L2.04 of 20)
 - s. Preliminary Landscape Details (L2.31 of 20)
 - t. Preliminary Landscape Details (L2.32 of 20)
- PP8. Staff Report, dated August 18, 2017
- PP9. City PowerPoint (10 slides)
- PP10. Memo from Keith Niven to Hearing Examiner, dated September 18, 2017
- PP11. Letter from Lauren Balisky to Keith Niven, dated September 19, 2017
- PP12. Quit Claim Deed, #20151231001105, recorded December 31, 2015

The City provided the following additional exhibits on September 25, 2017:

- PP13. Land Use Application #387640 – Mallard Bay, submitted December 16, 2016; with Project Details, as of May 11, 2017
- PP14. Mallard Bay: Geotechnical Report and Critical Areas Study, Golder Associates, Inc., dated December 15, 2016
- PP15. Memorandum from Jeff Schramm, Transportation Engineering NorthWest, to Doug Schlepp, Traffic Impact Analysis, dated December 14, 2016
- PP16. Letter from Jennifer M. Marriott to Whom it May Concern, dated December 16, 2016, Variance Request – Project Narrative
- PP17. Critical Areas Report and Conceptual Mitigation Plan, Talasaea Consultants, Inc., dated December 16, 2017
- PP18. PP12. Preliminary Technical Information Report, Core Design, Inc., dated December 16, 2016
- PP19. King County Certificate of Sewer Availability, dated December 3, 2016
- PP20. King County Certificate of Water Availability, dated December 3, 2016

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- PP21. Transportation of Concurrency Certificate, issued September 21, 2017
- PP22. Memo from Keith Niven to Hearing Examiner, dated September 25, 2017, RE: Mallard Bay Street Deviation & Assessment of Cumulative Impact of Variance Request
- PP23. Arborists Report, Greenforest Incorporated, to Leo Suver, Steve Burnstead Construction LLC, dated December 15, 2016
- PP 24. Email from Karen Walter, Muckleshoot Indian Tribe, to Keith Niven, dated August 18, 2017
- PP 25. Email from Karen Walter, Muckleshoot Indian Tribe, to Keith Niven, dated September 7, 2017, with email string
- PP 26. Email from Steven Mullen-Moses, Snoqualmie Tribe, to Keith Niven, dated September 7, 2017, with email string

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the public hearing:

FINDINGS

Application and Notice

1. Leo Suver, on behalf of Steve Burnstead Construction, LLC (Applicant),¹ requests a critical areas variance (CAV) to impact 9,741 square feet of stream buffer for an access road and a preliminary plat (PP) to subdivide a 13.1-acre parcel into 34 single-family residential lots. The property is located at 21403 SE 43rd Way. *Exhibit PP7; Exhibit PP8, Staff Report, pages 1 and 2; Exhibit PP13; Exhibit PP16; Exhibits V1 through V3; Exhibit V6, Staff Report, pages 1 and 2.*
2. The City of Issaquah (City) deemed the applications complete on December 16, 2016. The Applicant posted the property with a notice of proposed land use action on February 2, 2017. The City mailed notice of the applications for a CAV and preliminary plat to adjacent property owners within 300 feet of the site on June 28, 2017. City Planner Keith Niven testified that the neighborhood meeting, required by IMC 18.13.070, was combined with a meeting with the City's River & Stream Board on July 18, 2017. The City mailed notice of the open record hearing to adjacent property owners within 300 feet of the site and parties of record on August 22 and 27, 2017, and published notice in *The Issaquah Reporter* on August 25, 2017. The site was posted with notice of the hearing on August 30, 2017. *Exhibit PP1.a; Exhibit PP8, Staff Report, pages 2 and 5; Exhibit V4; Exhibit V5; Exhibit V6, Staff Report, page 3; Testimony of Mr. Niven.*
3. The Washington State Parks and Recreation Commission (WSPRC) submitted an email comment, dated August 2, 2017. The WSPC raised concerns about the proposed project impacts on the adjacent Lake Sammamish State Park, on regional trail connections, and on the park's wetland systems. The City also received written comments from the public,

¹ The Land Use Application identifies Leo Suver as the property owner's authorized agent. *Exhibit PP13.*

which are summarized in Findings 25 through 30. *Exhibit PP6; Exhibit PP8, Staff Report, pages 7, 10, and 11.*

State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's environmental checklist and other available information on file. The Applicant's environmental checklist identified songbirds as observed or known to exist on or near the site. The City's staff evaluation for the environmental checklist notes that the site provides valuable habitat for a substantial range of animals and likely provides habitat for a variety of birds and small mammals. The City determined that the proposed project would not have a probable significant adverse impact on the environment and issued a proposed Determination of Nonsignificance (DNS) on July 28, 2017,² with a comment/appeal deadline of August 18, 2017. The City published notice of the SEPA determination in *The Issaquah Reporter* on July 28, 2017. The Muckleshoot Indian Tribe provided email comments, dated August 18, 2017, requesting additional details, and a follow-up email, dated September 6, 2017. The Snoqualmie Tribe submitted an email comment, dated September 7, 2017, requesting that the Applicant retain the services of a professional archaeologist prior to any construction. The DNS was not appealed. *Exhibit PP4; Exhibit PP8, Staff Report, pages 2 and 7; Exhibits PP24 through PP26.*

Comprehensive Plan, Zoning, and Surrounding Property

5. The property is designated Multifamily Residential (MR) by the City Comprehensive Plan. The proposed density is 4.52 dwelling units per acre. Mr. Niven testified that the City has excess capacity for residential development; that this property is outside the City's Regional Growth Center; and that, although designated MR, a lower density can still comply with the Growth Management Act.

The property is zoned MF-H (29 dwelling units per acre). *IMC Table 18.07.360*. The purpose and intent of the MF-H designation is to provide for high-density multifamily neighborhoods, in direct proximity to a variety of urban services and commercial uses. Duplexes and multifamily units are permitted uses. In addition to the objectives stated in the Purpose and Intent section of *Chapter 18.06 IMC*, the following objectives also apply to this district:

1. Provide opportunities for high density multifamily dwellings in direct proximity to commercial and retail services while preserving open space areas;
2. Require landscape buffers which separate neighboring land uses and arterial roadway from dwelling units;

² Although the proposed DNS has the date of August 18, 2017 (*Exhibit PP4.a*), the Hearing Examiner assumes that the issue date of July 28, 2017, noted in the staff report, is the correct date. *Exhibit V6, Staff Report, page 3; Exhibit PP8, Staff Report, pages 2 and 7.*

3. Locate housing in close proximity to a range of urban services, to facilitate transportation alternatives and encourage pedestrian access;
4. Require that traffic generated from high density multifamily use will not pass through single family neighborhoods; and
5. Provide opportunities for limited scale retail, office, and service uses as part of a mixed use development.

IMC 18.06.100.H; Exhibit PP7.a; Exhibit PP8, Staff Report, pages 4 and 5; Testimony of Mr. Niven.

6. The MF-H zone does not require a minimum lot size or width. Proposed lots would range from 2,800 to 7,577 square feet in size. The Applicant would provide 20-foot side yard setbacks, 10-foot front yard setbacks, and 5-foot rear yard setbacks, consistent with the MF-H zone. *IMC Table 18.07.360.* The MF-H zone allows a maximum impervious surface area of 50 percent (or 286,751 square feet). *IMC 18.07.360, Table 1.* The site plan shows conceptual building footprints on each of the lots. The City determined that impervious surface limits would be calculated on the project, as a whole, and not on a lot-by-lot basis. *Exhibit PP2; Exhibit PP7.d; Exhibit PP8, Staff Report, pages 3, 5, and 6.*
7. Lake Sammamish State Park (Hans Jensen Recreation Area) is located to the east. Single-family residences are located to the south, across East Lake Sammamish Parkway. Condominiums are located to the west. A Sammamish Plateau Water & Sewer District sewer facility is located to the north. *Exhibit PP4.d.*

Existing Site

8. The 13-acre, triangle-shaped project site is presently undeveloped and completely forested. There is no upstream area draining into the site. The proposed site contains a stream and wetland in the southern portion of the property. The northern portion of the property contains a steep slope critical area. The site drains south and west, down steep slopes (40 percent or greater), to a stream running parallel to SE 43rd Way and then southeast into Wetland A, in the south portion of the site, and discharges to Lake Sammamish under East Lake Sammamish Parkway. *Exhibit PP.8, Staff Report, pages 3, 5, and 6; Exhibit PP18.*

Critical Areas

9. The Applicant submitted a Geotechnical Report and Critical Areas Study (Geotechnical Report) prepared by Golder Associates, Inc., dated December 15, 2016. The site contains EvC - Everett very gravelly sandy loam, KpB and KpD - Kitsap silt loam, and Ma – Mixed alluvial land. The Geotechnical Report identified seven steep slope hazard areas on-site and requested exemptions. Slope #1 is located on proposed Lots 3 and 4. The Applicant proposes to re-grade and flatten the portions between 10 and 20 feet in height as part of lot grading for Lots 3 and 4. The Applicant requests a steep slope critical areas exemption from the Director, as set out in IMC 18.10.580.E. Slope #2 is located south of

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the planned entry road off of SE 43rd Way. Although no development is currently planned for this area, the Applicant also requests an exemption based on the slope height meeting the exemption criteria (up to 20 feet). Slope #3 lies just north of Slope #2. The Applicant also requests exemptions where construction and grading for the planned project entrance road would eliminate nearly all of Slope #3 and where filling would eliminate Slope #5. Planned development near Slope #6 would include construction of a hammerhead driveway, with a road supported by an engineered retaining wall. The Applicant requests the Director reduce the steep slope buffer from 50 feet to 10 feet, as set out in IMC 18.10.580.A.2. The Applicant is also requesting an exemption from the steep slope critical areas for Slope #7.

The Geotechnical Report determined that the proposed development is feasible from a geotechnical perspective if engineering design recommendations are followed including those for seismic design criteria, foundations, floors, retaining structures, and permanent slopes. The Report determined that construction of houses is feasible if construction recommendations are followed including for erosion control and construction drainage; site preparation; slopes and temporary excavations; subgrade and foundation preparation; fill materials, placement, and compaction; re-use of on-site soils; wet weather construction; and geotechnical construction monitoring. The remaining steep slopes would be placed in a NGPE (Tract A) in the northern portion of the plat. *Exhibit PP7.d; Exhibit PP14.*

10. The Applicant also submitted a Critical Areas Report and Conceptual Mitigation Plan prepared by Talasaea Consultants, Inc., dated December 16, 2015. One Type F water, called Many Springs Creek, and two wetlands were identified and delineated on the property. Wetland A is a forested Category III wetland, with a 50-foot buffer. Wetland B, vegetated primarily by shrub species, such as salmon berry and Himalayan blackberry, as well as red alder and Oregon ash, is a Category IV wetland, with no buffer requirement under IMC 18.10.640.C. The proposed entrance road would impact approximately 9,741 square feet of stream buffer. Proposed stormwater dispersion trenches would impact approximately 1,185 square feet of Wetland A buffer and approximately 973 square feet of temporary buffer. The Applicant proposes to use buffer averaging to add no less than 11,127 square feet of upland forest to the stream buffer and no less than 1,185 square feet of upland forest to the Wetland A buffer. Wetland A and its buffer would be placed in a NGPE³ (Tract B) in the southern portion of the site. Minor buffer impacts would also result from required frontage improvements along SE 43th Way, which would be addressed during final design. NGPE tracts would be protected using rail fencing and signage under IMC 18.10.408 and .515. *Exhibit PP16.*

³ The City code defines a Native Growth Protection Easement (NGPE) as: “An easement granted to the City or other nonprofit entity for the protection of native vegetation within a critical area or critical area buffer.” The Preliminary Plat map depicts these areas as “NGPA.” *Exhibit PP7.d.*

Critical Areas Variance

11. The City code provides for variances from critical areas in Chapter 18.10 IMC – Environmental Protection. Variances may be granted to property owners who, due to the strict implementation of this chapter and/or to unusual circumstances regarding the subject property, are deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and under the same land use regulations, or have been denied all reasonable use of the property.⁴ *IMC 18.10.430.B.*
12. The proposed plat cannot be accessed from East Lake Sammamish Parkway due to the presence of previously mitigated wetlands and the topography of the property. The Applicant requests a critical areas variance to allow 9,741 square feet of impact to the Many Springs Creek (a Class 2-S Stream) stream buffer for an access road crossing from SE 43rd Way. A bridge or culvert would be used to span the creek and minimize impacts to the critical area. No impacts to the stream channel would occur. The City determined that the requested variance is consistent with the recommendations of the Applicant's geotechnical and wetland consultants. The Applicant submitted a Variance Request with a narrative prepared by Talasaea Consultants, Inc., dated December 16, 2016. The Project Narrative provides a history of the site, noting that Many Springs Creek was relocated eight to ten years ago to its current location, with associated wetland mitigation. Many Springs Creek is a salmonid-bearing creek with a 100-foot buffer. The proposed entrance road would align with another access road immediately across the street. The proposed access road would not result in any filling to Wetland B, and the road right-of-way would be the minimum required to construct the access road to City road standards. An additional 11,127 square feet of fully functioning buffer would be added to the stream buffer, which is already vegetated with native trees, shrubs, and herbaceous species. *Exhibit V6, Staff Report, page 2; Exhibit PP16.*
13. Mr. Niven submitted an Assessment of Cumulative Impact of Variance request, dated September 25, 2017. He determined that granting the variance would be consistent with the purpose of the Critical Areas chapter in allowing for the reasonable use of private property and would not establish a precedent inconsistent with the intent of IMC Section 18.10.430.G. *Exhibit PP22.*

Stormwater

14. The Applicant submitted a Preliminary Technical Information Report (PTIR) prepared by CORE Design, Inc., dated December 16, 2016. There is no upstream area draining into the site. The site drains south and west down steep slopes (40 percent or greater) to a creek running parallel to SE 43rd Way and then southeast into Wetland A in the south portion of the site, which discharges to Lake Sammamish under East Lake Sammamish

⁴ The City code defines a *variance* as “[a] modification of the regulations of the City [Land Use] Code as applied to a specific property when authorized by the Hearing *Examiner* after he/she finds that the literal application of the provisions of this Code would cause undue and unnecessary hardship in view of the facts and conditions applying to a building or lot.” *IMC 18.02.240.*

Parkway via Laughing Jacobs Creek. The proposed project would add more than 5,000 square feet of new impervious area. Conservation Flow Control (Level 2) and Sensitive Lake Water Quality are required. Stormwater would be managed using the guidelines and requirements of the 2009 King County Surface Water Design Manual and City Addendum criteria. The proposed project would include two detention-vault facilities and two modular wetland water quality system facilities. The entry road and frontage improvements would drain to the west vault, located at the entrance to the plat. The lots and remaining roads would drain to the east vault (Tract D), located to the west of Lots 5 and 6. Water quality treatment would be provided by Modular Wetland Systems, located downstream of each vault, and discharged to Wetland A through a dispersion trench. *Exhibit PP8, Staff Report, page 8; Exhibit PP18.*

15. Grading and excavation would take place on 57 percent of the site, including 16,300 cubic yards of cut and 14,300 cubic yards of fill. Site clearing on steep slopes would be limited to April 1 – November 1. Erosion control would include the Best Management Practices incorporated in the civil design drawings. *Exhibit PP4.d; Exhibit PP8, Staff Report, page 11; Exhibit PP14.*

Traffic

16. The Applicant submitted a Traffic Impact Analysis (TIA), prepared by Transportation Engineering NorthWest, dated December 14, 2016. The proposed 34 residences would generate 389 new weekday trips with 34 trips during the AM peak hour and 40 weekday PM peak hour trips. The TIA determined that the intersection of East Lake Sammamish Parkway SE and SE 43rd Way is anticipated to operate at Level of Service (LOS) C or better during the AM and PM peak hours in 2018, without or with the proposed project. A traffic concurrency review was conducted to evaluate the impacts of traffic generated by the proposal. On September 21, 2017, the City of Issaquah issued a Transportation Concurrency Certificate for 34 “net new vehicle internal trip ends.” The City determined that additional traffic from the proposed project has been mitigated with the formation of Local Improvement District (LID) 24. Through the LID process, the City constructed a roundabout at the intersection of East Lake Sammamish Parkway and SE 43rd Way. A turn pocket is proposed on SE 43rd Way to create a safe access point. *Exhibit PP4.d; Exhibit PP8, Staff Report, page 7; Exhibit PP15; Exhibit PP21.*
17. The TIA evaluated the entering sight distance (ESD) and stopping site distance (SSD) at the proposed plat access road. Based on a 45 mph design speed on SE 43rd Way, in the eastbound direction, the recommended design value for SSD is 360 feet, with the actual SSD greater than 360 feet. Minimum ESD requirements of 500 feet for left turns and 430 feet for right turns from the site would be met. The posted SE 43rd Way speed limit is 40 mph, with speed limit postings intended to meet 85th percentile speeds. A two-day speed study (December 7 and 8, 2016) on SE 43rd Way showed the 85th percentile speed at 43 mph in the eastbound direction and 42 mph in the westbound direction. In addition to an exiting left-turn merge lane for left turns out of the site, the project would construct

widening frontage improvements for bicycle lanes and a new eight-foot sidewalk.
Exhibit PP15.

Access and Parking

18. The property would be accessed from SE 43rd Way. The Applicant would construct the following internal streets, three of which require street-standard deviations, as described in the staff report:

- Road A (entry road off SE 43rd): (2) 10.5' travel lanes, sidewalk on the north side, no landscape strip through the critical area, 10-foot regional trail on the south side, no landscape strip. A deviation has been requested to Road A to minimize impacts on the adjacent critical areas.
- Road B (N/S road paralleling SE 43rd): (2) 10.5' travel lanes = curbs, 5-foot planter strip and 5-foot sidewalk on each side. Consistent with Detail T-11.
- Road C (northern road): (2) 10' travel lanes. 5 residences are access from Road C. Road C will be Conditioned to be a shared pedestrian/vehicle road. Road C is not an adopted street standard and requires a deviation. The proposal is to create a shared surface for automobiles and pedestrians.
- Road D (southern road): (2) 10' travel lanes. 5 residences are accessed from Road D. Road D provides vehicular access to five lots. Road D will be Conditioned to be a shared pedestrian/vehicle road. Road D is not an adopted street standard and requires a deviation. The proposal is to create a shared surface for automobiles and pedestrians.

Exhibit PP8, Staff Report, pages 7 and 8. The City Engineer approved the proposed deviations as meeting the City of Issaquah Street Standards deviation criteria. *Exhibit PP8, Staff Report page 8; PP22.*

19. The Applicant would provide two-car garages to provide two parking spaces per single-family residence, as required by City code and as reviewed with the building permits. *Chapter 18.09 IMC.* Parking would also be available in driveways. No on-street parking would be allowed. The Applicant would provide six additional guest parking spaces on top of the stormwater detention-vault lid in Tract D. *Exhibit PP8, Staff Report, page 6.*

Non-motorized Facilities

20. The City code requires non-motorized pathways, in addition to sidewalks, to link to adjacent developments, open spaces, schools, or other activity centers and public facilities. *IMC 18.07.081.* The Washington State Parks and Recreation Commission (WSPRC) submitted comments about the proposed plat design, concerned that it would hamper or preclude a planned regional trail connection between the East Lake Sammamish Trail and the East Plateau Trails up to neighborhoods on the Sammamish Plateau. The WSPRC noted that an abandoned railroad line parallels SE 43rd Way, ending just northeast of the Mallard Bay property. A connection following a former road

alignment through the Mallard Bay property would be needed to connect this regional trail system. The proposal now includes a 10-foot-wide, multi-use trail running east-west through the parcel and south to the East Lake Sammamish Parkway.

On September 18, 2017, Mr. Niven submitted a memo to the Hearing Examiner explaining that, when the Applicant purchased the parcel from King County, a 50-foot-wide public trail easement was placed on the property in order to help complete the regional Laughing Jacobs trail, connecting Sammamish to Lake Sammamish. Because the parties have not yet reached a resolution, Mr. Niven and Applicant Representative Leo Suver agreed that proposed conditions 1, 2, and 20 should be replaced with the following language, as Condition 25:

There is a 50-foot E-W trail easement located at the northern edge of the parcel recorded to benefit King County. By November 30, 2017, an agreement will be entered into where the Applicant will either:

- a) Remove all proposed lots from the encumbered property consistent with Exhibit 3 (revised), attached; or,
- b) Provide a relocation agreement letter from King County Parks. The letter will acknowledge:
 1. The County will agree to exchange the existing easement for a new easement, and
 2. The Applicant will construct a mixed-use trail for the length of the property along SE 43rd Way.⁵ The trail will be a minimum 10 feet in width, but will be 12-15 feet where not limited by critical areas and will be separated from the curb, where possible with landscaping; and,
 3. The County will either execute a separate agreement with the Applicant to relocate the easement or will be a signatory to this plat.

If the parties fail to agree, King County shall submit a report to the Hearing Examiner; the Hearing Examiner may decide to re-open the hearing if necessary.

Exhibit PP6.e; Exhibit PP8, Staff Report, page 6; Exhibit PP10; Testimony of Mr. Niven and Mr. Suver.

Landscaping and Tree Retention Area

21. The Applicant submitted a preliminary landscape plan and details, which includes a plant schedule, potable water irrigation budget calculations, and general landscape notes. The Applicant also submitted an Arborist Report, prepared by Greenforest Incorporated, dated December 15, 2016. The Arborist Report includes a significant tree inventory outside the

⁵ The proposed City condition referenced “43rd Place.” The Hearing Examiner assumes that SE 43rd Way was meant. *Exhibit PP10.*

critical areas, buffers, and buffer-average areas. The Arborist Report identifies a total of 7,787 diameter inches of significant trees, with 6,395 diameter inches to be removed and 1,392 diameter inches retained. Subdivisions in the MF-H zone must retain a minimum of 25 percent of the total caliper of existing significant trees outside of critical areas and buffers. *IMC 18.12.1385.A*. The Applicant submitted preliminary tree retention plan maps, prepared by CORE Design, Inc. The City code allows a reduction of up to 50 percent of the tree retention requirements through a Level 2 Review process. The City reviewed and conditionally approved the Applicant's tree retention request of 12.5 percent.⁶ *Exhibit PP7.k through .t; Exhibit PP8, Staff Report, pages 6 and 7; Exhibit PP23.*

Services and Utilities

22. All proposed utilities are available in the vicinity. Puget Sound Energy would provide electrical power and natural gas. The Applicant provided King County Certificates of sewer and water availability from the Sammamish Plateau Water & Sewer District, dated December 13, 2016. Mark Lawrence provided comments on behalf of the fire department, received October 4, 2016, requesting that fire lanes be a minimum of 20 feet wide and that computer modeling be required for fire ladder truck turning. Fire hydrants and fire flow are to be determined. *Exhibit PP4.d; Exhibit PP7.a; Exhibit PP13; Exhibits PP19 and PP20.*

Parks, Recreation, and Schools

23. No on-site active recreation areas are required. The Applicant would provide a play structure, seating, and a picnic bench within Tract D, however, where the stormwater vault would be located. The Applicant would pay a parks impact fee applied to each building permit to fund future acquisition and provisions of active park areas. The Issaquah School District did not provide comments on the proposed subdivision, and it is uncertain to which schools resident students would be assigned. Students would be bused to school. The Applicant would provide internal sidewalks, but a school bus stop location has not been determined. *Exhibit PP7.e; Exhibit PP8, Staff Report, page 8.*

Impact Fees

24. Impact fees are required for each new single-family residence. The Applicant would pay the fees for each residential unit for fire protection, schools, parks, general government (SEPA), and police (SEPA). Impact fees would be calculated at the time the City issues building permits. Traffic impact mitigation would occur as part of the project's roundabout LID. *Exhibit PP8, Staff Report, page 10.*

Public and Applicant Comments, and Staff Response

25. The City received written public comments on the application, which staff responded to in the staff report, as follows:

⁶ The City conditionally approved the tree retention reduction request subject to the Applicant receiving preliminary plat approval. *Exhibit 5.*

- Teresa Riley submitted email comments, dated July 5, 2017, expressing concern over the proposed access onto SE 43rd Way; traffic impacts; and LID fees. City staff explained that the access point of the proposed plat is being driven by the critical areas on the property, and that the Applicant must demonstrate that they have done what is feasible to minimize their impacts to the on-site critical areas. The access point onto SE 43rd Way must also meet the City's requirements for safety, including ingress and egress from the site. Access to and from the site has been reviewed by the City's traffic engineers and been deemed to meet safety requirements.
- June Thornton submitted an email comment, dated July 6, 2017, expressing safety concerns over the SE 43rd Way roundabout and traffic speeds on SE 43rd Way. City staff responses to Ms. Thornton's concerns were identical to Ms. Riley's concerns except Ms. Thornton also identified concern over the proximity of a school bus stop. Staff explained that the City will work with the School District to ensure there is a safe location for school buses to pick up and drop off, and that this review will occur prior to final plat approval.
- Alfred Wong submitted an email comment, dated July 9, 2017, expressing similar concerns over traffic safety and school buses addressed above.
- Ed Bullock, President, Alta at the Lake Association, submitted a letter, dated July 11, 2017, raising a number of concerns similar to those identified above. Mr. Bullock also raised a question about the Critical Area Variances and the number of parking spaces in the proposal. City Staff responded that a decision about critical areas would be made by the Hearing Examiner and would be made only after the staff position and public comments are considered. The Applicant responded to Mr. Bullock's concern about parking by providing additional guest parking spots.
- Nikki Fields, Washington State Parks & Recreation Commission Parks Design & Land Use Planner, submitted an email comment dated August 2, 2017, expressing concerns over the proposed regional trail location if it dead-ended at the property boundary of their property. City staff responded by noting it understands the concerns expressed by State Parks and, because the final trail location has not been decided, Staff believe this concern will be fully addressed prior to Final Plat submittal.

Exhibits PP6.a – .e; Exhibit PP8, Staff Report, pages 10 and 11.

26. Mr. Suver testified that he had met with Nikki Fields of the WSPRC and that fencing would be provided along the property line, with signs stating no entry to park property except via authorized entry points. He noted that longer driveways on all lots allow for two guest parking spaces per lot and that six additional guest parking spaces would be located on top of the east stormwater detention vault in Tract D. He responded to the DNS comments from the Snoqualmie Tribe and noted that a cultural survey would be completed prior to final plat approval. He also responded to the DNS comments from The Muckleshoot Tribe. *Exhibits PP24 through PP26; Testimony of Mr. Suver.*
27. Bill Shiels, a wetlands ecologist with Talasaea Consultants, Inc., testified for the Applicant about the Proposed Site Plan Overview (Exhibit V2.c). He noted that Many Springs Creek is a salmon stream, and the Applicant would use a culvert for the road crossing. He also stated that the proposed trail would not intrude into buffer areas. *Testimony of Mr. Shiels.*
28. Jeff Schramm, a Transportation Engineering NorthWest transportation engineer, testified for the Applicant and responded to public comments concerning traffic. He summarized his Traffic Impact Analysis, noting that there was only one feasible access point to the proposed plat; that the access point would be a right turn in, right turn out, with a left turn out and a merge lane; that the proposed access road would align with 213 Place SE on the north side of the street; and that the Level of Service at the roundabout would continue to operate at a Level of Service C, with or without the project. *Exhibit PP15; Testimony of Mr. Schramm.*
29. David Kappler, Vice President of the Issaquah Alps Trails Club, testified that he agreed with the proposed new Condition 25 regarding a resolution for the trail connector. He recommended that the proposed signage should read: “King County Park Property – Please Use Authorized Access.” *Testimony of Mr. Kappler.*
30. Lauren Balisky, King County Department of Natural Resources and Parks Real Property Agent, testified about a submitted comment letter, dated September 19, 2017, stating that King County retained a trail easement when the property was sold in 2005 and that full use of the easement is required. She explained that the County is in the process of working with the current property owner to best define trail location and development. *Exhibit PP11; Exhibit PP12; Testimony of Ms. Balisky.*

City Staff Recommendation

31. City staff determined that the proposal is consistent with the Comprehensive Plan designation, the Issaquah Land Use Code, and other development regulations, including Chapter 18.13 IMC (Subdivision Code) and RCW 58.117.110 (Washington State Subdivision Code), as well as the variance criteria under IMC 18.10.430.D. City staff recommended approval of the critical areas variance and preliminary plat, with

conditions. *Exhibit V6, Staff Report, pages 3 through 5; Exhibit PP8, Staff Report, pages 4 through 13.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and approve, approve with conditions, or deny a critical areas variance application based on the decision criteria, staff report, public comments, and discussion of the issues. *IMC 18.03.060.A; 18.04.490.B; 18.10.430.C.*

The Hearing Examiner has authority to hear and approve, conditionally approve, or disapprove the preliminary plat request after review of the preliminary plat, the administration's recommendation, testimony, and exhibits submitted at the public hearing. The Hearing Examiner makes the final decision on preliminary subdivisions. *Issaquah Municipal Code (IMC) 18.03.060.B; 18.03.170; 18.04.490.C.1; 18.13.140.A.*

Criteria for Review

Variances from critical areas regulations are decided using approval criteria found in IMC 18.04.490.B.2 and IMC 18.10.430.D. Before any variance may be granted, the Applicant must show:

- a. The variance is in harmony with the purpose and intent of the relevant City ordinances and the Comprehensive Plan;
- b. The variance shall not constitute a grant of special privilege which would be inconsistent with the permitted uses, or other properties in the vicinity and zone in which the property is located;
- c. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the property, and such variance will provide use rights and privileges permitted to other properties in the vicinity, located in the same zone as the property, and developed under the same land use regulations as the property requesting the variance;
- d. The granting of such variance would not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
- e. Alternative development concepts in compliance with the existing Code have been evaluated and undue hardship would result if such strict adherence to Code provisions is required;
- f. The variance granted is the minimum amount necessary to comply with the approval criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application; in addition, the scale of the use has been reduced as necessary to meet this requirement; and

g. The basis for the variance request is not the result of deliberate actions of the applicant or property owner.
IMC 18.04.490.B.2; IMC 18.10.430.D.

Further:

In the granting to variances from this Code, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies and intent set forth in this chapter.

IMC 18.10.430.G.

Preliminary plat proposals are reviewed through the Modified Level 4 review process and must comply with all the standards and criteria set forth in Chapter 18.13 IMC. *IMC 18.04.480 and 18.04.490.C.1.*

The standards and criteria regarding preliminary plats set forth in Chapter 18.13 IMC are established to promote the orderly and efficient division and re-division of land within the city, to avoid placing undue and unnecessary burdens on both the Applicant and the City, and to promote the public health and general welfare, complying with the provisions of Chapter 58.17 RCW. The criteria for review of a preliminary plat are set forth in RCW 58.17.110(2), as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that:

- (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (b) The public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

Prior to any approval of the preliminary plat, all minimum street and utility improvements, or reasonable conditions deemed necessary to fulfill the purpose of the subdivision code, shall be specified by the Hearing Examiner, and the Applicant shall be advised of such. *IMC 18.13.140.B.*

Special criteria apply to a request for alterations to streams and buffers:

No structures shall be permitted within streams or stream buffers except as outlined in the following subsections:

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A. Stream Crossings: Stream crossings may be allowed only if they meet the requirements as follows:

1. All road and utility crossings shall use bridges or other construction techniques which do not disturb the stream bed or bank; however, in the case of Class 2, 3 or 4 streams, appropriate methods demonstrated to provide fisheries protection may be used if the applicant demonstrates that such methods and their implementation will pose no harm to the stream and will not inhibit migration of fish and will accommodate one hundred (100) year flood flows as established by the City. This shall be accomplished through bridge crossing design and/or appropriate flood control facilities constructed as part of the project design. Any structure spanning a stream shall be designed so the supporting foundation is outside the ordinary high water mark;
2. All crossings shall be constructed during summer low flow and be timed to avoid stream disturbance during periods when use is critical to salmonids;
3. Crossings shall not occur over salmonid spawning areas unless no other possible crossing site exists on the subject property;
4. Crossings shall not diminish the flood carrying capacity of the stream;
... ; and
6. Crossings shall be minimized and serve multiple purposes and properties whenever possible.

IMC 18.10.775.

The criteria for review adopted by the Issaquah City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Critical Areas Variance

1. **With a condition, the request for a variance would comply with the criteria in IMC 18.10.430.D.** The City provided reasonable notice of the application and associated open record hearing. The requested variance would allow an access road across Many Springs Creek, a salmonid-bearing creek with a standard 100-foot buffer. The proposed access road stream crossing would allow the development of a 13.1-acre project site into 34 single-family homes. The variance would be in harmony with the relevant provisions of the City Comprehensive Plan and City code. Single-family residential use is consistent with the Multifamily Residential designation given to the property in the City Comprehensive Plan, as well as with the MF-H zoning district. The requested variance

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would be consistent with the development of other properties in the vicinity and zone, and would not constitute a grant of special privilege. Approval of the proposed variance is necessary because of the presence of previously-mitigated wetlands and the topography of the property proposed for development. These special circumstances limit the access road from SE 43rd Way to the proposed location. Alternative locations of the access road were evaluated. The proposed access would result in the fewest impacts to critical areas and their buffers. The Applicant's variance request is not the result of actions of the Applicant or property owner. An additional 11,127 square feet of fully functioning buffer would be added to the stream buffer, which is already vegetated with native trees, shrubs, and herbaceous species. The City determined that the proposal would not have significant adverse environmental impacts and issued a DNS, which was not appealed. A condition is necessary to ensure that the Applicant complies with all the conditions incorporated as part of the associated Mallard Bay Preliminary Plat approval. *Findings 1-31.*

2. **Consideration has been given to the cumulative impact of additional requests for like actions in the area.** The Hearing Examiner has reviewed the City staff memo on cumulative impacts. *IMC 18.10.430.G.* The City's memo determined that the granting of the variance would not establish a precedent inconsistent with the intent of Chapter 18.10 IMC. The Hearing Examiner has considered the possibility of like actions in the area, as well as possible cumulative developmental impacts to wetlands and streams, and determined that any cumulative impacts would be insignificant. *Findings 1-31.*

Preliminary Plat

3. **With conditions, appropriate provisions would be made for the public health, safety, and general welfare, and appropriate provisions would be made for open spaces, drainage ways, streets, transit stops, potable water supplies, sanitary wastes, parks and recreation, schools and school grounds, and all other relevant facts.** The proposed development of a 13.1-acre project site into 34 single-family homes would be consistent with the relevant provisions of the City Comprehensive Plan and City code. Single-family residential use is consistent with the Multifamily Residential designation given to the property in the City Comprehensive Plan, as well as with the MF-H zoning district. The Applicant would protect critical areas in Tracts A and B. With the approval of a Critical Areas Variance, a stream crossing for road access would impact 9,741 square feet of stream buffer. The Applicant would add 11,127 square feet of fully functioning buffer to the stream buffer as mitigation. The City code allows a reduction of up to 50 percent of the tree retention requirements through a Level 2 Review process. The City reviewed and conditionally approved the Applicant's tree retention request of 12.5 percent. Stormwater runoff from the proposed development would be collected and directed to two detention-vault facilities and two modular wetland water quality systems. The City of Issaquah would provide water and sewer service. The City issued a Certificate of Transportation Concurrency. The City determined that 40 new PM peak weekday trips would not result in significant adverse impacts on the local street system.

An existing left-turn merge lane for left turns out of the site would be constructed, along with frontage improvements for bicycle lanes and a new eight-foot sidewalk. The City would construct internal streets (Roads A – D). The City has approved street standard deviations for Roads A, C, and D. The location of a school bus stop has not yet been determined. The Issaquah School District did not provide comments. The proposed development would include an internal sidewalk. Park impact fees would apply to each building permit. Tract D would include a play structure, seating, and a picnic bench.

Following the hearing, Proposed Condition 13 was amended to require signs placed along the property line stating no entry to park property except at authorized access points. Following the hearing, Proposed Condition 15 was amended to add a requirement for six additional guest parking spaces on top of the stormwater detention vault in Tract D. Following the hearing, Proposed Condition 25 was added to address a trail connection through the plat. A new condition 26 has also been added to ensure that a cultural survey is completed prior to final plat approval.

Conditions are necessary to ensure that geo-technical construction recommendations are followed; that impact fees are paid prior to final plat approval; that frontage improvements are constructed, as well as internal streets subject to City approved deviations; and that each lot provides a minimum of two parking spaces, as well as ensuring that six guest parking spaces are provided in Tract D. *Findings 1-31.*

4. **With conditions, the public use and interest would be served by the platting of such subdivision and dedication.** The City provided reasonable notice and opportunity to comment on the request. The City reviewed the proposed plat and determined that it would not have a probable significant adverse impact on the environment. The City issued a DNS, which was not appealed. Conditions are necessary, as described in Conclusion 3 to address City staff concerns as well as those of the public. *Findings 1-31.*

DECISION

Based on the preceding findings and conclusions, the requests for a Critical Areas Variance to impact 9,741 square feet of stream buffer for an access road and a Preliminary Plat to subdivide a 13.1-acre parcel into 34 single-family residential lots at 21403 SE 43rd Way are **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and variance.⁷

Preliminary Plat Conditions

1. (deleted)
2. (deleted)

⁷ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by City Code.

3. Coordinate water and sewer connection and service with the Sammamish Plateau Water & Sewer District. Water and sewer availability shall be required prior to issuance of the Final Plat approval.
4. Prior to approval of the Construction permit for the roads, the Applicant shall demonstrate that the road configuration will accommodate turning radii for the fire ladder truck.
5. Site clearing shall on steep slopes shall be limited to April 1 – November 1.
6. Prior to construction of the retaining wall for slope 3, additional geo-technical analysis shall be provided to the City that considers the impacts of temporary excavation for the proposed vault. Provide the City with an affidavit from a qualified professional that no issues were encountered during construction activities.
7. Slopes 4-6: on-site inspection of construction is required by geo-technical expert. Additional geo-technical review is necessary prior to the permitting of the wall that supports the road connection for the northern lots, to ensure global stability and monitor construction of the wall. Provide the City with an affidavit from a qualified professional that no issues were encountered during construction activities.
8. Slope 7: Geo-technical inspection of construction is required. Provide the City with an affidavit from a qualified professional that no issues were encountered during construction activities.
9. Prior to final plat approval, provide a report on the 2-9 feet of medium dense fill soils that underlie lots 5-9 and on whether mitigation measures are necessary to support buildings.
10. Excavation for the vault may encounter perched groundwater. Prior to issuance of the Site Work Permit to construct the vault, additional geo-technical information is required.
11. Prior to final plat approval, impact fees will be required. Traffic impact fees have been completely satisfied with the repayment of the balance for LID 23.
12. Roads and the stormwater vaults shall be privately-owned.
13. Prior to issuance of the first building occupancy, two trail signs, approved by King County shall be installed. One sign shall be provided in the Tract at the east trail connection. The second sign shall be placed at the trail intersection with SE 43rd Way. Signs shall also be placed along the property line with language stating there is no entry to park property except at authorized access points.

14. Prior to issuance of building permits representing the 17th home, grading or construction impacts to the wetland/stream critical areas will be restored.
15. Each lot shall provide a minimum of two parking spaces. Where possible, driveways should be deeper than 18 feet to allow for guest parking. Six guest parking spaces shall be provided on top of the east stormwater detention facility in Tract D.
16. Replace 4' chainlink fence around the recreation area with 4' black aluminum or steel picket fencing.
17. Roads C & D will be 20-foot-wide concrete shared vehicle/pedestrian surface.
18. Approved tree protection measures must be in place prior to any construction or demolition activities and installed in conjunction with limits of clearing and grading delineation. Clearing and grading shall be outside the critical root zone of significant trees.
19. Intersection of plat with SE 43rd Way shall be constructed per approved TIA16-00005. Left turn out may be allowed conditioned on construction of center lane merge pocket per City Standards.
20. (deleted)
21. Position driveway on the northly side of Lots 9 and 28 to allow for adequate back-up maneuvering.
22. Position driveway on the southerly side of Lot 30 to allow for adequate back-up maneuvering.
23. Submit supporting geotechnical information with the construction permit submittal for the proposed trenchless sewer connection.
24. Prior to Final Plat approval, an impervious surface table shall be provided that demonstrates the proposal does not exceed the impervious surface limitations for the property. The table shall provide a maximum square footage of impervious surface allowed per lot.
25. There is a 50-foot E-W trail easement located at the northern edge of the parcel recorded to benefit King County. By November 30, 2017, an agreement will be entered into were the Applicant will either:
 - c) Remove all proposed lots from the encumbered property consistent with Exhibit 3 (revised), attached; or,

- d) Provide a relocation agreement letter from King County Parks. The letter will acknowledge:
4. The County will agree to exchange the existing easement for a new easement, and
 5. The Applicant will construct a mixed-use trail for the length of the property along SE 43rd Way.⁸ The trail will be a minimum 10 feet in width, but will be 12-15 feet where not limited by critical areas and will be separated from the curb, where possible with landscaping; and,
 6. The County will either execute a separate agreement with the Applicant to relocate the easement or will be a signatory to this plat.

If the parties fail to agree, King County shall submit a report to the Hearing Examiner; the Hearing Examiner may decide to re-open the hearing if necessary.

26. The Applicant shall complete a cultural survey on the property prior to final plat approval.

Variance Condition

27. This variance decision incorporates all of the Conditions from PP16-00005.

Decided this 16th day of October 2017.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

⁸ The proposed City condition referenced "43rd Place." The Hearing Examiner assumes that SE 43rd Way was meant. *Exhibit PP10*.